Supreme Court, U.S.
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84-199

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM, 1984

No.

RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation,

Petitioners,

v.

GENERAL ELECTRIC CO., a Corporation, and HOBART CORPORATION, a Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. THE CONSTITUTIONALITY OF NORTH CAROLINA GENERAL STATUTE 1-50(6): DOES SAID STATUTE VIOLATE THE DUE PROCESS GUARANTEES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 18 OF THE NORTH CAROLINA CONSTITUTION; OR VIOLATES THE "OPEN COURT'S" GUARANTEE OF ARTICLE I, SECTION 18 OF THE NORTH CAROLINA CONSTITUTION; OR "THE EQUAL PROTECTION GUARANTEES" OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION?

PARTIES

SUBSIDIARIES OF McDONALD'S CORPORATION,

a Corporation, —

Golden Arch, Inc.
McOpCo Service Company
The Property Place, Inc.
Frank R. Walker Company
McDonald's Business Facilities
Corporation, Inc.
McDonald's Olympic Fund, Inc.
McDonald's Restaurant Operations, Inc.
McDonald's University Realty Corporation
McDonalds of Hawaii Management Corporation
Restaurant Technology, Inc.
McDonald's Restaurants of Alabama, Inc.
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico

New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Hawaii

McDonald's Realty Equities, Inc.
M.D.F. Construction Company
Restaurant Realty Corporation
Adventitious Corporation
Mid Atlantic Adfund, Inc.
Stegar Corporation
McDonald's of Hawaii Development Company
EDT Partnership
Razorback Partnership
SWS Partnership
Laurens Partnership
Newberry Partnership
Michigan Partnership
B & L Partnership
Pelican Partnership

Domestic, With Foreign Branches

McDonald's English Real Estate Co. Ltd.
McDonald's System of Austria, Inc.
McDonald's System of France, Inc.
McDonald's Australian Property Corp.
McDonald's System of Germany, Inc.
McDonald's System of Europe, Inc.
MCD Properties, Inc.

McDonald's Productions, Inc.
Golden Arch Development Corporation
Restaurant Realty Corporation

Foreign
McDonald's in Guam Inc.
McDonald's of Agana-Rte. 4, 6468 Guam, Inc.
McDonald's Restaurants of Canada Ltd.
Read Restaurants Ltd.
Hollmart Family Restaurants Ltd.
J&M Darin Foods Ltd.
Golden Arch Realty Limited
T-Mac Resources Developments Ltd.
Horizons West Developments Ltd.
Adventures West of Alta Lake Ltd.
McDonald's Immobilien CmbH
McDonald's Distribution CmbH
WLS CmbH
McDonald's Promotions CmbH
Anver CmbH
McDonald's CmbH Hamburg
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Berlin
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den Tv-Bereich, Muenchen
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Stuttgart
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Deutschland
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Frankfurt
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Hamburg
McDonald's Promotions CmbH and Co. KG, Werbegesellschaft Fuer Den TV-Bereich, Saarbruecken

Family Food B.V.
McDonald's Advertising Cooperatie, C.A.
McDonald's France, S.A.R.L.
la Paix S.A.
Au Palace S.A.R.L.
McLyon S.A.
McDonald's Restaurants S.A.
Hamacona A.G.
Romac S.A.
McDonald's Gesellschaft mbH
McDonald's Werbegesellshaft
REL Liegenschaftsverwaltugsgesellschaft mbH
McDonald's Restaurants Belgium S.A.
Restaurant and Realty Services (Belgium) N.V.
McDonald's Restaurants Aktiebolag
McDonald's OY
McDonald's Restaurants (Denmark) ApS
McDonald's System of Australia Pty. Ltd.
McDonald's Properties (Australlia) Pty. Ltd.
McDonald's System of Australia Superannuation Fund Pty. Ltd.
McDonald's System of New Zealand, Ltd.
McDonald's Properties, Ltd.
McDonald's Comercio de Allmentos Ltda.
Empresa de Alimentos e Turismo Ltda.
Realco Comercio de Alimentos Ltda.
Restco Comercio de Alimentos Ltd.
McDonald's Finance Company, N.V.
McDonald's Restaurants (Hong Kong) Ltd.
Pinpoint Investments Limited
McDonald's Hamburgers, Ltd.
McDonald's Corp. (South Africa) Pty. Ltd.
McDonald's Golden Arches Restaurant Corporation Sdn. Bhd.
Golden Arches Restaurants Sdn. Bhd.
Wijaya Properties Sdn. Bhd.
Servi-Rapido de Colombia, S.A.
McDonald's Company (Japan) Ltd.
California Family Restaurants, Ltd.
McDonald's Golden Arches Restaurants, Ltd.
McKey Food Service Ltd.
Golden West Foods (1982) Ltd.

McDonald's Restaurants (Singapore) Pte. Ltd.
Restaurantes McDonald's, S.A.
McDonald's Catalonia, S.A.
Golden Arches Development Corp.

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FALL TERM, 1984

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RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation,

Petitioner,

v.

GENERAL ELECTRIC CO., a Corporation, and HOBART CORPORATION, a Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The Petitioners, RANGELEY A. BROWN, POLLY P. BROWN and McDONALD'S CORPORATION, a Corporation, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in this proceeding on May 8, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reproduced in Appendix A to this Petition.

JURISDICTION

The judgment of the Court below (Appendix A, infra, P. 3) was entered on May 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

N.C.G.S. 1-50(6) provides:

> "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption."

Article I, Section 18 of the North Carolina Constitution provides:

"All Courts shall be open; every person for an injury done him in his land, goods, person or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay."

Article I, Section 19 of the North Carolina Constitution provides:

"No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."

Constitution of the United States, Amendment 14 provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

This claim arose as a result of a fire which occurred on December 12, 1980, at a McDonald's hamburger fast food service store located at 305 South Madison Street, Whiteville, North Carolina. The fire originated in a fryer manufactured by the respondent, General Electric Company, allegedly as a result of defects in the design and construction of the fryer.

The fryer in question had been purchased by McDonald's from an authorized distributor for General Electric Company on or about December 13, 1974. McDonald's initially leased the fryer to Jack W. Crutchman; however, on or about February 1975, McDonald's sold the fryer

to Crutchman. The fryer was initially installed at 305 South Madison Street, in Whiteville, North Carolina, and remained there until the fire occurred in 1980. In May of 1979 Crutchman sold the fryer to the individual petitioners, Rangeley A. Brown and Polly P. Brown. On the date of the fire, McDonald's owned the real property (building) in which the fryer was located and the individual plaintiffs owned the personal property in the building.

Petitioners filed suit in the United States District Court for the Eastern District of North Carolina on December 11, 1981, based on diversity. Initially, petitioners brought suit against both General Electric and Hobart Corporation, the successor in interest to General Electric Company. On January 18, 1982, petitioners dismissed their claims against Hobart without prejudice. On February 9,

1982, after having first received an extension of time in which to respond to the petitioner's complaint, respondent, General Electric Company, filed an answer, generally denying the material allegations of the complaint and setting up various affirmative defenses.

On January 5, 1983, petitioners moved to amend their original complaint by reinstating Hobart Corporation as a party defendant. This motion was allowed by Magistrate Leonard on January 31, 1983. Hobart Corporation thereafter filed an answer and counterclaims on February 22, 1983.

Respondents moved for summary judgment on June 29, 1983. The motion was heard before Judge W. Earl Britt, who pursuant to an Order filed July 12, 1983, granted the respondents' motion for summary judgment and dismissed the case. Petitioners gave Notice of Appeal to the United States

Court of Appeals Fourth Circuit on July 25, 1983.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit Court of Appeals has erroneously upheld a State Statute (North Carolina) which under the facts in this case violates the Fourteenth Amendment of the United States Constitution, Article I, Sections 18 and 19 of the North Carolina Constitution, in that, it abrogates and extinguishes without due process a vested right of the petitioners herein which had accrued prior to the running of the six years encompassed in the State Statute herein involved [N.C.G.S. 1-50(6)] in that said statute has no grace period or savings clause to protect the vested right of the Appellants and therefore is arbitrary, in that, it affords no reasonable time to file a complaint protecting the aforesaid vested right (a claim for

relief as a result of a fire) after said vested right accrued and prior to the running of the six years involved in this particular State Statute and therefore said State Statute is unreasonable, discriminatory, and leaves the ability to file, in this case one day, to chance, thereby dictating that this court declare said statute unconstitutional and remedy the harshness and unfairness of the results herein involved.

CONCLUSION

N.C.G.S. 1-50(6) should be declared unconstitutional.

Respectfully submitted,

ANDERSON, BROADFOOT, ANDERSON, JOHNSON & ANDERSON

BY: Henry L. Anderson, Jr.

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Counsel for Petitioners

APPENDIX A

OPINION OF COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-1685

Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation,

Appellants,

versus

General Electric Company, a corporation and Hobart Corporation, a corporation,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. W. Earl Britt, District Judge. (81-84-CIV-3)

Argued February 9, 1984. Decided May 3, 1984.

Before RUSSELL, WIDENER and PHILLIPS, Circuit Judges.

Henry L. Anderson, Jr. (Anderson, Broadfoot, Anderson, Johnson & Anderson on brief) for Appellants; James G. Billings (Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan on brief) for Appellees.

PER CURIAM:

The plaintiffs in this product liability action appeal from the district court's order granting summary judgment to the defendants. We affirm.

This suit arose as a result of fire at a MacDonald's Restaurant that was operated by Rangeley and Polly Brown, who, along with MacDonald's Corporation, are appellants here. The fire originated in a fryer manufactured by General Electric Co., a defendant below, allegedly as the result of the fryer's defective design and construction. The complaint alleges that General Electric originally sold the fryer to MacDonald's Corp. on December 13, 1974, and that the Browns acquired it in

May of 1979. It is undisputed that the fire occurred on December 12, 1980, and that the plaintiffs filed suit December 11, 1981, almost seven years after the fryer's original sale.

On these alleged facts, the district court granted summary judgment, relying upon the limitations bar of N.C.G.S. Section 1-50(6) which provides:

> "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption."

Appellants do not contest the district court's holding that the statute's literal terms bar their claim, but challenge the operation of the statute on constitutional grounds. First, they contend that, as applied to them, the statute violates the due process clause of the fourteenth amendment to the United

States Constitution and article I, section 18 of the North Carolina Constitution, in that it unconstitutionally destroys a vested right by barring actions accruing so near to the expiration of the six-year statutory period that filing suit within that period would be effectively impossible. Second, they argue that, on its face, the statute is a violation of the equal protection guarantees of the United States and North Carolina Constitutions in that it makes a number of arbitrary and irrational classifications. Finally, they challenge the statute as a violation of the "open courts" provision of the North Carolina Constitution.

Having considered the briefs and oral arguments, we are persuaded that the district court correctly rejected the appellants' constitutional challenges. We therefore affirm on the reasoning of the

district court. Brown v. General Electric Co., No. 81-84-CIV-3 (E.D.N.C. July 12, 1983).

AFFIRMED.

CERTIFICATE OF SERVICE

I, Henry L. Anderson, Jr., attorney for Petitioners in Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation, vs. General Electric Company, a corporation and Hobart Corporation, a corporation, do hereby certify that I have this date caused to be forwarded three copies of Petition for Writ of Certiorari for Petitioners, Rangeley A. Brown, Polly P. Brown and McDonald's Corporation, a corporation, via United States Mail, postage prepaid, to James G. Billings, Counsel for Respondent, Post Office Box 12807, Raleigh, North Carolina, 27605, and to Honorable Rufus Edmiston, Attorney General of North Carolina, Post Office Box 629, Raleigh, North Carolina, 27602.

This 3rd day of August, 1984.

Henry L. Anderson, Jr.
Counsel for Petitioners
Post Office Box 474
Fayetteville, NC 28302